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ABSTRACT

Progress on school choice in the statehouse and courtroom during 2002 set the stage for ambitious 2003 legislative agendas in many states and the U.S. Congress. The U.S. Supreme Court ruled that voucher programs do not violate the Constitution, even when participating schools are overwhelmingly religious. Research supporting choice has grown considerably. Ten states publicly fund voucher or tax credit programs, and 39 states and the District of Columbia have charter school laws. In 2002, over 40 school choice bills were introduced. Nonetheless, the majority of poor children remain trapped in failing schools. Nearly 6 in 10 high school seniors lack basic knowledge of U.S. history, and over half of low income 4th graders cannot read at basic levels. Students are behind many of their international peers on tests of core knowledge, despite higher than average per-pupil expenditures. Lawmakers can make decisions informed by the growing body of research illustrating how school choice can improve academic performance of at-risk students, promote parental involvement and satisfaction, and foster accountability. In 2003, Congress will consider new choice legislation and reauthorization of several key federal education programs. It is recommended that Congress provide vouchers to students in the District of Columbia, expand choice for students with special needs, and hold oversight hearings on choice. (Contains 99 footnotes.) (SM)

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PROGRESS ON SCHOOL CHOICE IN THE STATES

KRISTA KAFER

Progress on school choice in the statehouse and courtroom during 2002 sets the stage for an ambitious 2003 legislative agenda in many states and the U.S. Congress. Most significant, the Supreme Court of the United States ruled in *Zelman* v. *Simmons-Harris* that voucher programs do not violate the Constitution even when participating schools are overwhelmingly religious.

Meanwhile, the body of research supporting choice grew considerably. This research, the Supreme Court's landmark legal opinion, and the increased legislative activity on choice provide a foundation for new programs that will empower parents to choose the schools that best meet their children's needs.

Nationwide, the school choice movement has made significant gains. As of December 2002:

- More than 46,000 students were benefiting from five publicly funded voucher programs in Florida, Maine, Ohio, Vermont, and Wisconsin.[1]
- Six states were offering tax credits or deductions for educational expenses or contributions to scholarship programs.
- Thirty-nine states and the District of Columbia had enacted charter school laws.
- Over 40 proposals to authorize vouchers, tax credits, or charter schools had been introduced in state legislatures.
- In the U.S. Congress, a bill to grant low-income parents a tax deduction for education expenses had been approved by the House Ways and Means Committee.[2]

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1. In 2002, 10,789 students participated in the Milwaukee Parental Choice Program; 4,523 participated in the Cleveland Scholarship and Tutoring Program; 14,185 participated in Maine's tuitioning program (8,252 went to public schools, 5,933 went to private); 7,147 participated in Vermont's tuitioning program (school breakdown not available); 1,611 received Florida's Opportunity Scholarships, 702 of which were used at private schools; and 8,200 students participated in the Florida McKay Scholarship Program. See Marya DeGrow, "Educational Vouchers and Tax Credits: A State-by-State Summary of Current Programs," Independence Institute, December 18, 2002, and Manhattan Institute for Policy Research, Education Research Office, "Florida Facts," at *http://www.miedresearchoffice.org/index.html*.
2. The House Ways and Means Committee reported H.R. 5193, the Back to School Tax Relief Act of 2002, sponsored by Representative Bob Schaffer (R–CO), to the House on September 11, 2002.

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- Nine states were offering statewide public school choice, while 21 states were offering limited public school choice.[3]
- The federal No Child Left Behind Act, signed in January 2002, had granted students in more than 8,600 low-performing schools nationwide the right to transfer to higher-performing schools.
- More than 60,000 students had benefited from more than 100 privately funded scholarship programs.[4]
- The President's Commission on Excellence in Special Education had recommended that parents of special-needs children should be provided with options for their education.

PROGRESS AT THE FEDERAL LEVEL

In January 2002, President George W. Bush signed the No Child Left Behind Act. This major education reform law requires states to compile a list of all schools that have failed to make adequate yearly progress toward meeting state standards for two consecutive years. In 2002, children attending 8,652 schools nationwide that were deemed "failing" under the provisions of this legislation were eligible to transfer to better-performing schools. Students enrolled in schools that had failed for three years were eligible to obtain supplemental services such as tutoring.

Some states and districts, however, did not provide public school choice or supplemental services for all eligible students as mandated by the Act, citing insufficient capacity within their public school systems. In New York City and Albany, New York, parents of students in failing schools filed a lawsuit when the school districts did not provide their children the educational opportunities required by the federal law.[5]

In July 2002, a presidential commission recommended expanding educational options for students served under the Individuals with Disabilities Education Act (IDEA), stating that "The Commission views parental empowerment as essential to excellence in special education. Increasing parental empowerment coupled with public accountability for results will create better results for children and schools."[6] The commission reasoned that "Parental and student choice is an important accountability mechanism and IDEA should include options for parents to choose their child's educational setting."[7]

Although thousands of children with disabilities throughout the country are being educated in private schools at public expense under the IDEA, many children do not have this option. In order to get a private placement, the members of the Individualized Education Plan (IEP) team, which includes the child's teachers, administrators, specialists, and parents, must agree that the child would be more appropriately served in a private program. The options are limited to the team's decisions and can seem arbitrary to frustrated parents.[8] The IDEA is due for reauthorization this year.

In September 2002, the House Ways and Means Committee approved the Back to School Tax Relief Act of 2002 (H.R. 5193), which would have given low-income parents a tax deduction for expenses related to elementary and secondary education at public or private schools.

EXISTING SCHOOL CHOICE PROGRAMS

Arizona

Enacted in 1997, an Arizona law allows individuals to receive a tax credit of up to $500, and married couples to receive a credit of up to $625, for donations to a private tuition scholarship program. Individuals may also receive a credit of up to $200

3. See Center for Education Reform, "Answers to Frequently Asked Questions, About School Choice," at *http://edreform.com/school_reform_faq/school_choice.htm*.
4. See Children First America, "Backgrounder/Overview," at *www.childrenfirstamerica.org/about/backgrounder.htm*.
5. Mark Walsh and Joetta L. Sack, "Suits Contend Officials Fail to Obey ESEA," *Education Week*, February 5, 2003.
6. U.S. Department of Education, "A New Era: Revitalizing Special Education for Children and Families," Presidential Commission on Excellence in Special Education, July 2002.
7. *Ibid.*
8. Press Release "Paige Principles for Reauthorizing Individuals with Disabilities Education Act (IDEA)," February 25, 2003, at *www.ed.gov/PressReleases/02-2003/02252003.html*.

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for donations to public school extracurricular activities.[9]

On January 26, 1999, the Arizona Supreme Court upheld the tax credit plan, finding the program to be neutral with regard to religion and beneficial to low-income families who have been "coerced into accepting public education."[10]

From 1998 to 2002, the tax credit program generated $56 million that has financed nearly 36,000 scholarships.[11] More than 80 percent of the scholarship recipients were from lower-income families. A Cato Institute report found the credit to be revenue-neutral. The scholarships cost less than the per-pupil expenditure at the public schools. The system saves money when students who have been educated at public expense transfer to less costly private schools, offsetting the revenue loss of the tax credit.[12]

Florida

Florida has three school choice programs: Opportunity Scholarships, McKay Scholarships for students with disabilities, and an education tax credit.

The A+ Plan provides Opportunity Scholarships to students in schools that have failed state assessment benchmarks twice within a four-year period, allowing them to carry their per-pupil public dollars to another public or private school. Of the 1,611 students using the Opportunity Scholarships during the 2002–2003 school year, 702 used the voucher to attend a private school and the rest are attending other public schools.[13]

During the same year, approximately 8,200 disabled students used McKay Scholarships to attend another public or private school.[14] The McKay Scholarship program, enacted as a pilot program by the Florida legislature in 1999 and expanded statewide in 2001, provides vouchers to special-needs students if their parents are dissatisfied with their academic progress.[15]

In addition, 15,000 students statewide are using Florida's corporate income tax credit scholarship during the 2002–2003 school year. Under this program, which was approved by the state legislature in 2001, corporations can donate as much as $5 million or 75 percent of their corporate income tax bill, whichever is less, to a scholarship fund. The company is then given a tax credit for the entire amount that was donated. The program gives low-income students scholarships worth $3,500 or the full cost of tuition, whichever is less, to attend a private school or a $500 voucher to attend a public school in another school district. Income thresholds apply.[16]

Illinois

In 1999, the Illinois House and Senate approved an educational expenses tax credit plan (S.B. 1075). The law provides an annual tax credit of up to 25 percent of education-related expenses, including tuition, book fees, and lab fees that exceed $250, up to a maximum of $500 per family.[17] After enactment, opponents brought two lawsuits against the credit. The credit was upheld in both circuit and appeals courts. In 2001, the Illinois Supreme Court refused to reconsider the two district appeals court rulings upholding the tax credit.[18]

9. DeGrow, "Educational Vouchers and Tax Credits."
10. Mark Walsh, "Tax Credits Pass Muster in Arizona," *Education Week*, February 3, 1999.
11. Dan Lips, "The Arizona Scholarship Tax Credit: A Model for Federal Reform," Goldwater Institute, August 1, 2002.
12. Carrie Lips and Jennifer Jacoby, "The Arizona Scholarship Tax Credit: Giving Parents Choices, Saving Taxpayers Money," Cato Institute, September 17, 2001, at *www.cato.org/pubs/pas/pa414.pdf*.
13. Manhattan Institute for Policy Research, Education Research Office, "A+ Accountability Program Opportunity Scholarships," at *www.miedresearchoffice.org/accountability.htm*, and DeGrow, "Educational Vouchers and Tax Credits."
14. DeGrow, "Educational Vouchers and Tax Credits."
15. Lisa Fine, "Florida's 'Other' Voucher Program Taking Off," *Education Week*, August 8, 2001.
16. Manhattan Institute for Policy Research, Education Research Office, "Corporate Tax Credit Scholarships," at *www.miedresearchoffice.org/corporatetaxscholarships.htm*.
17. State of Illinois, 91st General Assembly Public Acts, at *www.legis.state.il.us/legislation/publicacts/pubact91/acts/91-0009.html*.

Iowa

In 1987, the Iowa legislature enacted a law providing tax credits and deductions for education expenses. Under the original law, families earning less than $45,000 could deduct up to $1,000 per child from their state income tax liability for education expenses. Taxpayers using the standard deduction could take a tax credit of up to $50 for education expenses for each child.[19] The law was amended in 1996 and again in 1998, and all families may now take a tax credit of 25 percent of the first $1,000 spent on their children's education.[20]

Maine

Maine has been paying for students to attend private schools since colonial times. A century ago, the state enacted the town "tuitioning" law that serves students today. Under the law, school districts without public schools allow students to attend public schools in other districts or non-sectarian private schools.[21] In 1981, the legislature enacted a law preventing students from selecting religious schools.[22]

Minnesota

Since 1955, Minnesota families have been able to deduct education expenses from their state taxes.[23] In 1997, the legislature enacted legislation giving Minnesota families who earn $33,500 or less a refundable tax credit of up to $1,000 per student, up to $2,000, for education expenses, excluding tuition. The law increased the maximum deduction to $1,625 for expenses associated with elementary school education, including tuition, and up to $2,500 for junior high school and senior high school expenses.[24]

Ohio

Enacted in 1995, the Cleveland Scholarship and Tutoring Program provides elementary school students with vouchers worth up to $2,250 for tuition at a private school of choice.[25] Although the number of vouchers was increased from 4,523 for the 2001–2002 school year to 5,523 for the 2002–2003 school year, officials say they have been forced to turn away more than 1,100 Cleveland parents who applied for vouchers because there were not enough to meet the demand.[26]

Pennsylvania

In 2001, the Pennsylvania legislature approved an education tax credit program that permits corporations to receive credits of up to $100,000 for contributions to organizations that provide scholarships to private schools or grants to public schools for innovative programs. The state may award no more than $30 million in tax credits per year. Scholarship recipients must meet income eligibility guidelines.[27]

Vermont

Vermont has operated a "tuitioning" program for students in school districts without a public school since 1874.[28] Students may attend a public school in another district or an approved non-sectarian private school. As was the case in Maine, students in Vermont could have chosen religious schools during the first 100 years that the program was in

18. George A. Clowes, "Other Court Action on School Choice," *School Reform News*, August 2001.
19. Tom Mirga, "Tuition Tax Credits Are Challenged in Iowa," *Education Week*, October 28, 1987.
20. "Legislative Update," *Education Week*, June 5, 1996, and Robert C. Johnston, "Despite Talk, Lawmakers Slow to Copy Tax Credits," *Education Week*, June 3 1998.
21. Institute for Justice, "The Case for School Choice: Raymond, Maine Litigation Backgrounder," at *www.ij.org/cases/index.html*.
22. John Gehring, "Legal Battle Over School Vouchers Returns to Maine," *Education Week*, September 25, 2002.
23. See Minnesota House of Representatives, Research Department, "Minnesota's Public School Fee Law and Education Tax Credit and Deduction," *Information Brief*, January 2003, at *www.house.leg.state.mn.us/hrd/pubs/feelaw.pdf*.
24. *Ibid.*
25. "State Voucher Programs," *Education Week*, October 3, 2001.
26. Caroline Hendrie, "Applications for Cleveland Vouchers Soar After High Court Ruling," *Education Week*, September 4, 2002.
27. DeGrow, "Educational Vouchers and Tax Credits."
28. Kelly Amis, "Century-Old Voucher Programs Show Benefits of Choice," *School Reform News*, April 2002.

existence. An estimated 7,147 students participated in the program in the 2001–2002 school year.[29]

Wisconsin

More than 10,000 students participate in the Milwaukee Parental Choice Program. Established in 1990 and expanded in 1995, the program provides vouchers to Milwaukee families that are at or below 175 percent of the poverty level to enable their children to attend private or religious schools of choice. The Wisconsin Supreme Court upheld the program in 1998.[30]

PRIVATELY FUNDED SCHOOL CHOICE

Thanks to such private foundations as Children First America (CFA) and the Children's Scholarship Fund (CSF), the number of privately funded scholarships enabling low-income public school students to attend a private school of choice continues to grow.

Scholarship organizations have been active for over 10 years and have served more than 100,000 children. More than 100 privately funded organizations have invested $500 million in the future of America's children, providing vouchers that range from $1,500 to $5,000 per year. Because vouchers typically do not cover the entire tuition, some financial commitment from the parents is usually required.[31]

Children First America has played a central role in developing many of the scholarship programs and continues to provide support for new and existing scholarship organizations. CFA also provides information on parental choice to parents; local, state, and federal elected leaders; and the general public.[32]

The Children's Scholarship Fund, founded in 1998, is a multimillion-dollar foundation that matches funds raised in communities throughout the country. The CSF provides scholarships to nearly 34,000 students at 7,000 schools in 49 states. In 2001, *Worth* magazine named it one of "America's 100 Best Charities."[33]

CHARTER SCHOOL DEVELOPMENTS

Iowa and Tennessee recently joined 37 states and the District of Columbia in enacting a law to establish charter schools.[34] The first charter school opened its doors in 1992 in St. Paul, Minnesota. The number of charter schools increased by 14 percent in 2002, bringing the total to approximately 2,700 schools. In 2002, Wyoming and Indiana opened their first charter schools. In 2002, the states with the most charter schools included Arizona, with 465; California, with 427; Florida, with 227; Texas, with 221; and Michigan, with 196.[35]

"Virtual charter schools" that implement educational programs via the Internet are also on the rise. There are approximately 50 virtual charter schools around the nation.[36] One company providing virtual schooling—K12, founded by former U.S. Secretary of Education William Bennett—enrolls kindergarten through 5th grade students in California, Colorado, Florida, Idaho, Minnesota, Ohio, Arkansas, Wisconsin, and Pennsylvania. Homeschooling families may purchase the school's online curriculum.[37]

29. DeGrow, "Educational Vouchers and Tax Credits."
30. See Institute for Justice, "Milwaukee School Choice Case," at *www.ij.org*, and DeGrow, "Educational Vouchers and Tax Credits."
31. See Children First America Web site at *www.childrenfirstamerica.org*.
32. *Ibid.*
33. See Children's Scholarship Fund Web site at *www.scholarshipfund.org*.
34. Iowa and Tennessee have enacted weak charter school laws but have not opened any charter schools. See Center for Education Reform, "Charter School Highlights and Statistics," December 20, 2002, at *www.edreform.com*.
35. Press release, "Growth in Charter Schools Reflects Increasing Demands for Choices," Center for Education Reform, December 20, 2002, at *www.edreform.com/press/2002/charternumbers.htm*, and e-mail correspondence with Anna Varghese, Center for Education Reform, February 24, 2003.
36. Mary Lord, "O E-pioneers!" *U.S. News and World Report*, December 9, 2002.
37. Neil Irwin, "E-Schooling Firm Set to Open," *The Washington Post*, December 28, 2000, p. E1.

Two U.S. Department of Education reports released in June 2001 support existing research indicating that public schools and districts respond positively to the formation of charter schools. *Challenge and Opportunity: The Impact of Charter Schools on Districts* reported that districts improved their services and operations in response to competition from charter schools. *A Study of Charter School Accountability* provides evidence that external accountability (answering to a chartering authority) promotes internal accountability (collaboration and cooperation within the school).

In response to these reports, U.S. Secretary of Education Rod Paige noted that

> Charter schools offer meaningful options for parents and their children—particularly for those children who would otherwise be left behind in low-performing schools. The good news is that charter schools do not just help the students they serve directly, they also prod the entire system to improve.[38]

Research over the past two years has found that charter schools are typically smaller than traditional schools, serve predominantly at-risk populations, and show achievement gains after two years. Specifically:

- The 2000–2001 evaluations of the Public Charter Schools Program, commissioned by the U.S. Department of Education, found that charter schools are smaller than traditional public schools, enjoy strong parental involvement, and serve diverse populations of students.[39]
- Results from the Center for Education Reform's 2002 Survey of American Charter Schools show that charter schools educate children who are poorly served by traditional public schools and are both cost-effective and innovative.[40]
- In April 2002, Harvard professor Caroline Hoxby found that increased school choice raises school productivity and student achievement within the public school system. Her report found that competition from charter schools in Michigan and Arizona, and from Milwaukee's voucher program, has compelled public schools to raise their productivity as measured by students' achievement gains.[41]
- According to a recent study by the National Center for Policy Analysis, 39.7 percent of the students enrolled in Texas charter schools are African–American—nearly three times the percentage of black students among those enrolled in traditional public schools. The study also found that 57.6 percent of all students in Texas charter schools are economically disadvantaged, compared to 50.4 percent of the students in traditional public schools.[42]
- A study conducted by the Texas Public Policy Foundation found that, although new charter school students in Texas experience a first-year decline in test scores, students who remain in charter schools for consecutive years achieve strong academic gains. It also found that the academic performance of students who were in charter schools for two years improved at a greater rate than that of traditional public school students.[43]

38. News release, "Charter Schools Prompting Improvement in School Districts, According to Two U.S. Department of Education Reports," U.S. Department of Education, June 14, 2001. For the full reports, see *Challenge and Opportunity: The Impact of Charter Schools on Districts*, at *www.ed.gov/pubs/chartimpact*, and *A Study of Charter School Accountability*, at *www.ed.gov/pubs/chartacct*.

39. SRI International, *A Decade of Public Charter Schools: Evaluation of the Public Charter Schools Program: 2000–2001 Evaluation Report*, November 2002, at *www.sri.com/policy/cep/choice/yr2.pdf*.

40. Center for Education Reform, "Charter Schools 2002: Results from CER's Annual Survey of America's Charter Schools," October 2002, at *www.edreform.com/charter_schools/survey2002.pdf*.

41. Caroline Hoxby, "School Choice and School Productivity (Or, Could School Choice Be a Tide That Lifts All Boats?)," National Bureau of Economic Research, *Working Paper* No. 8873, April 2002, at *papers.nber.org/papers/w8873*.

42. Matt Moore, "Texas Charter Schools: Do They Measure Up?" National Center for Policy Analysis, *Brief Analysis* No. 403, June 25, 2002, at *www.ncpa.org/pub/ba/ba403*.

43. Dr. Timothy Gronberg and Dr. Dennis Jansen, "Navigating Newly Chartered Waters," Texas Public Policy Foundation, April 2001, at *www.tppf.org*.

- According to a 2002 California State University study, *California Charter Schools Serving Low SES Students: An Analysis of the Academic Performance Index*, the state's charter schools were more effective than traditional public schools in improving the academic achievement of low-income and at-risk students. Charter schools in which at least half of the students participated in the federal free and reduced-price lunch program improved at a rate of 22 percent, while academic achievement in traditional public schools improved at a rate of 19 percent. Moreover, charter schools in which 75 percent of the students participated in the lunch programs improved at a rate of 28 percent, compared with 24 percent in the other public schools.[44]
- A report released by the Georgia Department of Education in 2002 shows that the state's charter schools are outpacing their traditional counterparts. More charter school students passed the state's proficiency tests in all five subjects, compared to students in traditional public schools. Furthermore, fewer charter school students repeat grades or drop out of school.[45]

HOME SCHOOLING

The home-school movement has grown steadily over the past two decades.[46] As many as 2 million children in grades K–12 were homeschooled during the 2001–2002 school year. The home-school population is growing at a rate of 7 percent to 15 percent a year.[47] From 1999 to 2002, the number of African–American home-schooling families increased nearly tenfold. African–American families now comprise nearly 5 percent of the total number of home-schooling families.[48]

Home-school students have higher academic achievement than students in public or private schools. Home-schooled elementary school students tend to perform one grade level higher than their peers in traditional schools. By high school, they are achieving four grade levels above the national average.[49] Nearly all home-schooled students participate in at least two extracurricular activities such as dance, sports, music, and volunteerism. In fact, the average home-school student participates in five such activities.[50]

Barred from the National Honor Society, home schoolers have even started their own honor society, Eta Sigma Alpha. Founded in 1999 by Joanne Juren, a former public school teacher and administrator, the society has 20 chapters nationwide.[51]

WINNING IN THE COURTS

In June 2002, the U.S. Supreme Court upheld the Cleveland Scholarship and Tutoring Program, ruling that the use of public money to underwrite tuition at private and religious schools does not violate the Establishment Clause of the Constitution as long as parents make the decision regarding where the voucher is used.[52] The Cleveland program provides vouchers for tuition or tutoring fees at public, private, secular, and religious schools.

44. Press alert, "Achievement Gains Found at California Charter Schools: *Disadvantaged Children Benefit More from Charter Schools*," Center for Education Reform, March 11, 2002. For the complete study, see *www.calstatela.edu/academic/ccoe/c_perc/rpt1.pdf*.
45. Center for Education Reform, *Education Reform Newswire*, November 19, 2002, at *www.edreform.com*. For the full report, see *www.doe.k12.ga.us/charterschools/about.html*.
46. George Clowes, "Homeschooling Update," *School Reform News*, January 2003, p. 13.
47. See Home School Legal Defense Association, "Homeschooling Research: Frequently Asked Questions," at *www.hslda.org/research/faq.asp#1*.
48. Clowes, "Homeschooling Update."
49. Lawrence M. Rudner, Ph.D., "The Scholastic Achievement and Demographic Characteristics of Home School Students in 1998," University of Maryland, College of Library and Information Services, ERIC Clearinghouse on Assessment and Evaluation, at *www.hslda.org/docs/study/rudner1999/Rudner2.asp*.
50. Dr. Brian D. Ray, *Strengths of Their Own: Home Schoolers Across America*, National Home Education Research Institute, 1997, at *www.hslda.org/docs/study/ray1997/17.asp*.
51. Ellen Sorokin, "Home-Schoolers Start a New Honor Society," *The Washington Times*, January 4, 2003, p. 1.
52. George Clowes, "Parents Are Winners in Supreme Court Ruling," *School Reform News*, Vol. 6, No. 8 (August 2002).

Given the range of options and the freedom parents have to choose among them, the Court concluded that the Cleveland program is neutral with regard to religion even though most parents used vouchers to send their children to religious schools. Writing for the Court, Chief Justice William Rehnquist stated, "We believe that the program challenged here is a program of true private choice, consistent with *Mueller*, *Witters*, and *Zobrest*, and thus constitutional. As was true in those cases, the Ohio program is neutral in all respects toward religion."[53]

This momentous decision removes the constitutional cloud from policy consideration, enabling state legislators and Congress to consider, on their merits, new programs to give parents greater choice in the schooling of their children.

Other important state-level constitutional battles remain in play as the courts interpret state constitutional provisions, including discriminatory "Blaine amendments" that prohibit tax money from flowing to religious institutions. Vestiges of a 19th century anti-Catholic movement, state-level Blaine amendments have been used by some courts to strike down voucher programs, while other courts have upheld choice programs despite the clause. Thirty-seven states have Blaine-type language, and 29 have prohibitive "compelled support" provisions. This type of constitutional language dates back to colonial times and was intended to prevent governments from compelling individuals to contribute to or attend a state-designated church.[54]

The following are among the significant developments in the courts during 2002.

- Undeterred by the U.S. Supreme Court's ruling on the Cleveland voucher program, a Florida circuit court struck down the state's voucher program in August 2002.[55] Supporters of vouchers, including Governor Jeb Bush, have challenged the decision. The state has appealed the circuit court's decision, and the judge has allowed the program to continue while the case makes its way through the courts.[56]
- On July 18, 2002, the Ninth U.S. Circuit Court of Appeals declared unconstitutional a Washington State policy that prohibits students who use state higher education scholarships to earn a degree in theology. The court declared in *Davey* v. *Locke* that "a state law may not offer a benefit to all...but exclude some on the basis of religion." In other words, when a state makes a program or benefit available to all individuals, it cannot exclude those who choose a religious option.[57]
- In June 2002, the Washington Supreme Court, overturning a previous trial court decision, ruled that the state's Educational Opportunity Grant (EOG) Program does not violate the state constitution when college students use grants for tuition at religiously affiliated colleges. Washington's Blaine amendment prohibits public-sector funding of sectarian religious institutions. The state has interpreted this provision to prohibit students from using state aid to attend religious K–12 schools or colleges. The court ruled that the Blaine amendment did not apply to higher education. However, it did not consider whether the Blaine amendment itself violates the U.S. Constitution, which requires that government programs must be non-discriminatory toward religion.[58]
- In September 2002, the Institute for Justice filed a lawsuit in Washington State arguing that the Blaine amendment discriminates against students at religious schools. The century-old amendment is prohibiting Seattle School Administrator Carolyn Harrison from finishing the internship, required by the University of Washington at Tacoma, at her Jesuit school, Bellarmine Preparatory. This suit, *Harrison* v. *Gre-*

53. *Zelman* v. *Simmons-Harris*, 122 S.Ct. 2460 at 2467 (2002).

54. Richard Komer, "School Choice: The State Constitutional Challenge," *Liberty & Law*, Vol. 10, No. 5 (September 2001).

55. Michael A. Fletcher, "Florida's Voucher Law Is Struck Down," *The Washington Post*, August 6, 2002, p. A7.

56. Alan Richard, "Florida Sees Surge in Use of Vouchers," *Education Week*, September 4, 2002.

57. Pete Du Pont, "Blaine Is Slain," *The Wall Street Journal*, August 1, 2002.

58. News release, "Washington Supreme Court Sidesteps Key Issue in School Aid Case," Becket Fund for Religious Liberty, June 13, 2002.

goire, is part of an Institute for Justice effort to ensure that state constitutions are interpreted as parallel to the U.S. Constitution—that is, that they are neutral with regard to religion. If the suit reaches the U.S. Supreme Court, the Court's decision could ensure that Blaine amendments in other states can no longer be used to discriminate against individuals' rights.[59]

- The Institute for Justice is also representing six Maine families who have filed suit against a 1981 statute that removed religious schools from the state's century-old voucher program. Under Maine's "tuitioning" law, students who live in rural towns without a public school may attend a public school in another town or a private school. Until 1981, students had been allowed to choose to attend sectarian schools under the program.[60] Maine's constitution does not have a Blaine amendment.

RESEARCH REVEALING THE BENEFITS OF CHOICE

Lawmakers can now make decisions informed by a growing body of evidence that choice often improves the academic performance of at-risk students, promotes parental involvement and satisfaction, and fosters accountability in public school systems. Significant research over the past two years confirms earlier findings that choice improves the educational experience of students.

- According to research conducted by Harvard University professor Paul Peterson, the academic achievement of low-income African–American students who received scholarships offered by the School Choice Scholarships Foundation (SCSF) rose significantly.[61] African–American students who participated in the program for three years had scores on the Iowa Test of Basic Skills that were 9.2 percentile points higher than the scores of students who remained in the public schools. Students who participated in the program for fewer than three years still experienced gains.[62]
- In September 2002, the U.S. General Accounting Office released a report that examined research findings regarding 78 privately funded voucher programs. Several studies showed that families using vouchers were more satisfied with their children's new schools with regard to such factors as academics and safety. Parents using privately funded vouchers reported that their children's schools communicated with them more frequently and had a more positive environment than did the public schools. Other studies documented the academic gains of African–American students who had received vouchers.[63]
- In 2001, Harvard and Georgetown University researchers released a study comparing the academic experience of students using privately funded vouchers through the Washington Scholarship Fund with that of similar students in a control group who remained in public schools. Their findings on academic and social indicators were significant: Parental satisfaction was higher for parents of scholarship students. They reported that, in private schools, students did more homework, were safer, and had greater respect for teachers. Parents with children in private schools were as likely to report that their children had a disability or difficulty speaking English. Parents cited academic quality as their reason for choosing the new school. Schools did not refuse to admit students for religious reasons. Significantly, African–American students using the vouchers scored 9 percentile rank points higher on national math-

59. George Will, "School Choice: The Ugly Opposition," *The Washington Post*, November 12, 2002, p. A25; news release, "Basic Facts About the Case Harrison v. Gregoire," Institute for Justice, February 12, 2003.

60. See *Anderson v. Town of Durham* at *www.ij.org*.

61. Daniel Mayer, Paul Peterson, Christina Clark Tuttle, and William Howell, "School Choice in New York After Three Years: An Evaluation of the School Choice Scholarship Program Final Report," Harvard University, Mathematica Policy Research, Inc., and University of Wisconsin, February 2002.

62. "New Research Finds School Voucher Programs Raise Academic Achievement," *White House Bulletin*, May 22, 2002.

63. U.S. General Accounting Office, *School Vouchers: Characteristics of Privately Funded Programs*, GAO–02–752, September 2002, at *www.gao.gov/new.items/d02752.pdf*.

and-reading achievement tests than their peers in public schools.[64]

- A 2001 Indiana University study of the Cleveland Scholarship and Tutoring Program found that test scores were higher for voucher recipients than for their public school peers. The study concluded that "Students who entered the Scholarship Program as kindergartners were achieving at significantly higher levels than other students when they entered first grade" and that, while public school students made academic gains in the first grade, students who used vouchers for three years remained ahead academically.[65]
- A 2001 RAND Corporation review of existing literature on voucher and charter programs found that the voucher programs produced positive or neutral achievement benefits, resulted in higher parental satisfaction, and hold the potential for increases in school integration. Because choice programs have been small and limited, RAND researchers caution against using them to make predictions about the impact of large programs. Rather, they suggest, "A program of vigorous research and experimentation is called for, but not one confined to choice programs. Better information on the performance of conventional public schools and alternative reform models is needed as well."[66]
- In October 2002, Manhattan Institute scholars Jay P. Greene, Ph.D., and Greg Forster, Ph.D., released a new study that focuses on the impact of school choice on achievement among public school students in Milwaukee and San Antonio. After controlling for demographic characteristics such as race and income, and for local spending differences, the authors found increased academic achievement in public schools that had been exposed to competition from private school scholarship programs and charter schools.[67]
- A 2002 analysis of the voucher programs in Maine and Vermont (the oldest in the nation) found that choice increases productivity. In these states, students in towns without public schools may attend private schools at public expense. Schools located in areas with high competition in attracting students (and their per-pupil funding) had a strong incentive to improve performance. Such schools exhibited higher levels of achievement than did those in areas with lower competition.[68]
- Research conducted in 2002 by Duke University professor Thomas Nechyba suggests that a citywide voucher program could alleviate neighborhood income segregation by drawing higher-income families into poorer areas. Their relocation to low-income neighborhoods would increase property values and improve the tax base, thereby generating greater revenues for the public schools. Thus, benefits flow not only to students using vouchers, but also to students who remain in the public school system. In this way, vouchers can contribute to neighborhood revitalization and public school improvement while increasing the freedom of parents to choose the school that best meets their children's needs.[69]
- A 2001 analysis of the Florida A+ program, also conducted by Jay P. Greene of the Manhattan Institute, found that vouchers provided a strong incentive for schools to improve. In Florida, schools receive grades ranging from "A" to "F,"

64. Patrick J. Wolf, Paul E. Peterson, and Martin R. West, "Results of a School Voucher Experiment: The Case of Washington, D.C., After Two Years," prepared for annual meeting of the American Political Science Association, San Francisco, California, August 30–September 2, 2001.

65. Kim K. Metcalf, Ph.D., "Evaluation of the Cleveland Scholarship Program 1998–2000 Executive Summary," Indiana University, Indiana Center for Evaluation, September 2001.

66. Brian P. Gill, P. Michael Timpane, Karen E. Ross, and Dominic J. Brewer, "Rhetoric Versus Reality: What We Know and What We Need to Know About Vouchers and Charter Schools," RAND Corporation, RB–8018–EDU, 2001.

67. Jay P. Greene and Greg Forster, "Rising to the Challenge: The Effect of School Choice on Public Schools in Milwaukee and San Antonio," Manhattan Institute, *Civic Bulletin* No. 27, October 2002.

68. Christopher Hammons, Ph.D., "The Effects of Town Tuitioning in Vermont and Maine," Milton & Rose D. Friedman Foundation, 2002.

based on the proportion of students who pass the state's proficiency tests. Students who attend schools that receive a failing grade twice within a four-year period can receive a voucher to attend another public or private school of choice. Greene found that schools receiving an "F" improved when they were faced with the prospect of vouchers.[70]

WINNING IN THE COURT OF PUBLIC OPINION

A poll conducted in July 2002 by Zogby International Polling on behalf of the Center for Education Reform found that 76 percent of respondents "strongly" or "somewhat" supported "providing parents with the option of sending their children to the school of their choice—either public, private or parochial—rather than only to the school to which they are assigned." When asked specifically whether they were "in favor of or against allowing poor parents to be given the tax dollars allotted for their child's education and permitting them to use those dollars in the form of a scholarship to attend a private, public, or parochial school of their choosing," 63 percent of respondents favored the proposal. Rates of approval were higher among minority respondents.[71]

Even a 2001 survey conducted for the National Education Association (NEA), a union that has actively opposed vouchers, found that 63 percent of those surveyed supported President Bush's plan to give parents of children in failing schools a voucher to send their children to another public, charter, or private school. According to Representative John Boehner (R–OH), chairman of the U.S. House Committee on Education and the Workforce,

> Americans support giving parents the power to do what they think is best for their children's education. The President's plan gives this power as a last resort to the parents of children trapped in chronically failing schools after those schools have been given every opportunity to change. A solid majority of Americans support this approach.[72]

Support for choice also is strong among Members of Congress—at least as far as their own children are concerned. According to a Heritage Foundation survey, among members of the 107th Congress, 47 percent of Representatives and 50 percent of Senators who have school-age children were sending their children to private schools. The percentage of Members practicing private school choice in 2001 was higher than in Heritage's previous surveys, particularly in the House of Representatives. It was also much higher than the percentage of the general population (approximately 10 percent) that sends their children to private schools.[73]

Despite the rising popularity of private schools among Members of Congress, however, many of the same policymakers who exercise choice in their own children's education voted to block legislation that would have given lower-income families the range of options that they enjoy. Had these Members voted on choice legislation in a way that was consistent with their own practices, such legislation would have passed.[74]

MINORITY SUPPORT FOR CHOICE

Potentially powerful and growing support for school choice is found among minority parents. A 2002 National Opinion Poll conducted by the Joint

69. Thomas Nechyba, "The Unintended Benefits of Private School Choice," Milton & Rose D. Friedman Foundation, June 2002; see also Thomas Nechyba, "School Finance, Spatial Income Segregation, and the Nature of Communities," Duke University and National Bureau of Economic Research, at *www.econ.duke.edu/~nechyba/segregation.pdf*.

70. Jay P. Greene, Ph.D., "An Evaluation of the Florida A-Plus Accountability and School Choice Program," Manhattan Institute for Policy Research, February 2001.

71. Press release, "Poll Finds 63 Percent of Americans Favor School Choice," Center for Education Reform, August 20, 2002.

72. Press release, "New Poll for NEA Shows Majority of Americans Back President Bush's Approach to School Choice," Committee on Education and the Workforce, U.S. House of Representatives, 107th Cong., 1st Sess., March 5, 2001.

73. Jennifer Garrett, "Another Look at How Members of Congress Exercise School Choice," Heritage Foundation *Backgrounder* No. 1553, May 22, 2002.

74. *Ibid.*

Center for Political and Economic Studies found that 57.4 percent of African–American respondents favored a voucher system when asked, "Would you support a voucher system where parents would get money from the government to send their children to the public, private, or parochial school of their choice?"[75] An earlier poll by the Joint Center found that, while 69 percent of black elected officials oppose vouchers, 60 percent of the black populace supports them. Furthermore, 70 percent of blacks under the age of 50 support vouchers.[76]

A July 2001 poll by the Latino Coalition and Hispanic Business Roundtable found that 73 percent of Hispanic adults surveyed supported the following statement: "The government should provide taxpayer-funded vouchers to help low-income families send their children to a better public, private, or church-run school." An even larger percentage of respondents supported giving all parents a $1,000 tax credit for educational expenses, including tuition.[77]

A June 2002 poll conducted by Black America's Political Action Committee (BAMPAC) found that 63 percent of African–American parents would like to transfer their children from their current public schools to a public charter school or private school. More than half of the respondents gave their children's public school a grade of "C" or lower. BAMPAC President Alvin Williams declared that "African–Americans are becoming increasingly frustrated with the public school system and its failure, in many cases, to provide a quality education for their children. This just shows us that the idea of choice is widely supported by the African–American community."[78]

In September 2000, the Black Alliance for Educational Options (BAEO) began a public relations campaign to highlight the importance of choice for children in inner-city communities. The campaign featured a compelling slogan: "School choice is widespread unless you're poor."[79] BAEO Chairman Howard Fuller supports the view that giving minority parents vouchers to take their children out of failing schools is the best way to close the racial achievement gap.[80]

In 2001, the Hispanic Council for Reform and Educational Options (CREO) was formed to address the education crisis among Hispanic youth. Faced with high dropout rates, illiteracy, and teen pregnancy among Hispanic youth, CREO advocates increased education options to improve the academic achievement of all Hispanic children.[81]

PARENTAL SUPPORT FOR SCHOOL CHOICE

The following parental testimonies are reprinted from *www.schoolchoiceinfo.org* with permission from the American Education Reform Council. The testimonies are abridged for reasons of space (emphasis in original).

> In third grade, my son Jonathan was making A's and B's on his report card, yet when he was tested, he could not read. *My son was on the honor roll, and he could not read.* My husband and I wanted to enroll Jonathan in another school, but we had no real options. Our income is limited.... But, beginning in the fourth grade, Florida's new A+ Opportunity Scholarship Program let us enroll Jonathan at Sacred Heart Catholic School in Pensacola. Everybody at Sacred Heart knows Jonathan. He feels like he's somebody.... Since he started

75. David A. Bositis, "2002 National Opinion Poll: Politics," Joint Center for Political and Economic Studies, 2002, at *130.94.20.119/whatsnew/2002_NOP_text&tables.pdf*.
76. Center for Education Reform, *Education Reform Newswire*, July 10, 2001, at *www.edreform.com*. For the full report, see *www.jointcenter.org*.
77. Latino Coalition and Hispanic Business Roundtable, "National Survey of Hispanic Adults," July 24, 2001, at *http://hbrt.org/surveys/010724.htm*.
78. Ellen Sorokin, "Poll Finds Most Blacks Favor Charter, Private Schools," *The Washington Times*, July 19, 2002, p. A13.
79. See Black Alliance for Educational Options Web site at *www.baeo.org/*.
80. Scott Greenberger, "Many Blacks Seek Choice of Schools," *The Boston Globe*, February 26, 2001, p. B5.
81. See Hispanic CREO Web site at *www.hcreo.org/*.

attending Sacred Heart, Jonathan gets up in the morning ready to go to school. *Most importantly, Jonathan can now read.*

—By Cassandra, whose son Jonathan uses a publicly funded Opportunity Scholarship to attend a school of choice.

The Milwaukee program has let me choose schools that I think are best for my girls.... My daughters are excelling. I believe both of them will have a choice to go on to college because of the voucher program. Before, I thought that wouldn't happen. I have seen how options like choice, charter schools, and privately funded scholarships through Milwaukee's PAVE organization have made a difference for many other low-income families like ours. People who once felt they had little or no voice in their children's education now have a voice. Because of these opportunities, I see young African Americans doing better.

—By Tony, whose daughters Chronda and Tanya attend schools of choice through the Milwaukee voucher program.

When Dylan was at the public school, the teacher was writing full-page letters every day telling me what Dylan could not do. He would come home with a full day's schoolwork, plus homework because he couldn't read the instructions. Homework became a four-hour ordeal of fighting and tears.... After he failed so many times, and he has no self esteem and no desire to try, then he's labeled as something else and no one wants to deal with him. [At his new school] he does very well. He has learned a lot of coping mechanisms that he wasn't taught at the public school.... After just eight weeks in the private school he earned his very first, ever, perfect score on a spelling test. The skills and abilities he has attained just amaze me. I always knew he could do it, he just needed the right way to unlock that busy brain of his.

—By Susan, whose son Dylan attends a school specializing in dyslexia, using a McKay Scholarship.

Kenya is a very happy child. She likes to smile. But, she is very demanding. She's mentally and physically profoundly handicapped and she can't walk, she can't talk. The public school system has been some help, but not enough. I felt Kenya was not making enough progress in public schools.... When I learned about the McKay Scholarships, I chose one of the schools that fit her needs. The McKay Scholarship gives parents a choice—a choice in their child's future. You have an opportunity to make some decisions about the services your child will receive.... She will receive much more in the private school system: psychological services, speech therapy, and more aggressive physical and occupational therapy.

—By Selma, whose daughter Kenya has uses a McKay Scholarship to attend a school that specializes in serving children with disabilities.

I care about my child's education. I would do anything, whatever it takes, to get her the best education possible. Ebony is a very bright child. I'm not saying that just because she's my child. I know she will grow up to be somebody very special. So when I found out she wasn't doing well in her social studies and math, I knew I had to do something. I was going to find a school that would help her do her best. I wanted to send her to a private school but I could never afford it. If you try to send your children to private school, you will have to work two or three jobs to do it, and then you won't have any time for your kids. That's why the Cleveland Scholarship Program is very important to me. When I got the letter saying she got a voucher, I was so happy I didn't know what to do. It was like someone was coming to my rescue.

—By Eulanda, whose daughter Ebony receives a voucher through the Cleveland Scholarship and Tutoring Program.

LEGISLATIVE OUTLOOK FOR CHOICE IN THE STATES

In 2002, state legislators introduced more than 40 proposals to authorize vouchers, tax credits, or charter schools. After the Supreme Court's decision upholding the constitutionality of school vouchers, several lawmakers announced their intentions to introduce voucher and tax credit legislation in 2003. Some lawmakers, including Texas State Representative Ron Wilson (D–Houston), pre-filed bills for the new session.

Several other states also show promise in furthering the movement for choice and education options.

- Colorado school choice advocates are optimistic about the prospects for choice legislation in both chambers of the legislature during 2003. H.B. 1160, introduced by Representative Nancy Spence (R–39), and S.B. 77, introduced by Senator Ed Jones (R–11), would establish limited voucher programs. H.B. 1137, introduced by Representative Keith King (R–21), and S.B. 1, introduced by Senator Bruce Cairns (R–28), would provide tax credits to individuals who donate to scholarship organizations. S.B. 99, introduced by Senator John Evans (R–30), would allow school boards to set up voucher programs or place a program on the ballot for a decision by district voters. District citizens could also petition to place the issue on the ballot.[82]
- Louisiana Governor Mike Foster has proposed a limited choice program that would give children in failing schools the option of attending a private school.[83]
- South Carolina Governor Mark Sanford, during his recent election campaign, proposed a comprehensive education plan that includes giving students in failing schools an "education passport" that would enable them to transfer to another public school or a private school. Transfers to private schools would be financed through a corporate tax credit. Governor Sanford also proposed scholarships for students with special needs.[84]
- Maryland Governor Robert Ehrlich is backing S.B. 388, the Public Charter School Act of 2003, introduced by Senator Janet Greenip (R–33). This strong legislation would enable Maryland to have charter schools. In his State of the State address on January 29, 2003, Governor Erhlich declared that "It is time for this Assembly to enact a charter schools bill with teeth—one that will give disadvantaged students the opportunity to pursue their dreams."[85]
- The Utah Senate passed a tax credit bill, S.B. 34, by a vote of 20 to 8. The proposal was included in the education omnibus bill, S.B. 154. The tax credits, however, were removed from S.B. 154 before the final vote. The Utah House voted 41 to 32 to put a non-binding referendum on the November 2004 ballot that asks: "Should Utah's public tax dollars or potential tax dollars be used to fund private education through the use of a tuition tax credit?"[86]
- Hawaii Governor Linda Lingle has advocated breaking up Hawaii's single school district into seven districts with locally elected boards. This year, she will take her case to the voters with a referendum. Governor Lingle has called for more charter schools, home schooling, magnet schools, and on-line schooling.[87]
- On March 13, the Washington Senate approved a bill that could make Washington the 40th state to have charter schools. S.B. 5012 was passed by a vote of 26 to 23.[88]

82. See Colorado General Assembly Web site at *www.state.co.us/gov_dir/stateleg.html*.
83. Center for Education Reform, *Education Reform Newswire*, February 11, 2003.
84. See the campaign's Web site at *www.sanfordforgovernor.com/issues.asp?action=detail&id=1665&name=Issues*.
85. For the text of the governor's speech, see *www.gov.state.md.us/012803-stateofthestate.asp*.
86. See Utah State Legislature Web site at *www.le.state.ut.us/*.
87. Mark Walsh, "State of the States," *Education Week*, January 29, 2003.

- Florida Governor Jeb Bush has proposed vouchers as a way to meet the mandate for smaller class sizes that was passed by referendum in November 2002. The cost of enabling students to transfer from overcrowded public schools to private schools would be lower than the cost of building additional public school capacity. In a statement to the *Miami Herald*, Governor Bush said, "It's a cost-effective way of dealing with this issue. Many [districts] won't take it, but so what? That option should be there for them to consider."[89]
- Choice legislation has also been introduced in other states, including Texas, New York, Vermont, and New Hampshire.

LEGISLATIVE OUTLOOK IN CONGRESS

Some of the lowest levels of academic achievement exist in the nation's capital. Despite per-pupil expenditures of more than $10,000, 94 percent of 4th grade students in Washington, D.C., are not proficient in math and 90 percent lack proficiency in reading, according to the National Assessment of Educational Progress (NAEP).[90] The results are similar for 8th graders. Three-quarters of D.C. 4th graders lack even basic reading and math skills. Many will never catch up. As few as 59 percent of students graduate from high school.[91]

Research strongly suggests that vouchers would improve the academic achievement of D.C. students. Researchers at Harvard and Georgetown Universities found improved academic achievement and higher parental satisfaction for African–American students who used privately funded scholarships through the Washington Scholarship Fund.[92] According to the NAEP test results, parochial school students consistently achieve at a higher rate than their peers in public schools.[93] Research by Heritage Foundation Analyst Kirk Johnson, Ph.D., using NAEP data confirms this trend for African–American students in the District and shows that, on average, a black 8th grader in a Catholic school outperforms 72 percent of his or her public school peers.[94]

Given the failure of other reforms to improve achievement and the growing recognition that additional funding alone will not improve the system, Congress should give families in the District of Columbia publicly funded scholarships to send their children to a public or private school of choice. In 1997, such legislation was passed by both houses of Congress, only to be vetoed by then-President Bill Clinton.

Representative Jeff Flake (R–AZ) introduced similar legislation, the District of Columbia Student Opportunity Scholarship Act (H.R. 684), on February 11, 2003. This bill would provide low-income students with scholarships to attend another public or private school within the D.C. metro area. The voucher would be worth the cost of tuition or $5,000 (under half the per-pupil expenditure of D.C. public schools), whichever is less, for students from families whose income is equal to or below the poverty line, and 75 percent of the cost of tuition or $3,750 for students from families earning up to 185 percent of the poverty level.

President George W. Bush's fiscal year (FY) 2004 budget also includes a D.C. voucher proposal as part of a $75 million Choice Incentive Fund that would provide competitive grants to states, school districts, and community-based nonprofit organizations to provide scholarships to students to attend a

88. See Washington State Legislature Web site at *www.leg.wa.gov/wsladm/bills.cfm*.

89. Joni James and Steve Harrison, "Vouchers Proposed to Reduce Class Sizes: Governor Says It's Cost Effective," *The Miami Herald*, January 24, 2003, p. 1.

90. See National Center for Education Statistics, *The Nation's Report Card State Profiles: District of Columbia*, at *nces.ed.gov/nationsreportcard/states/*.

91. Jay P. Greene, Ph.D., "High School Graduation Rates in the United States," Manhattan Institute for Policy Research, April 2002.

92. Wolf, Peterson, and West, "Results of a School Voucher Experiment: The Case of Washington, D.C., After Two Years."

93. See U.S. Department of Education, National Center for Education Statistics, at *nces.ed.gov/nationsreportcard/sitemap.asp*.

94. Kirk A. Johnson, Ph.D., "Comparing Math Scores of Black Students in D.C.'s Public and Catholic Schools," Heritage Foundation *Center for Data Analysis Report* No. 99–08, October 7, 1999, at *www.heritage.org/Research/Education/CDA99-08.cfm*.

school of choice. Under this proposal, the District of Columbia would receive a choice grant.[95]

In all, the budget includes several school choice initiatives: for example, a refundable tax credit for parents transferring their child out of a "failing" school, as defined under the No Child Left Behind Act. The credit would be worth 50 percent of the first $5,000 in tuition, fees, and transportation costs. The No Child Left Behind Act currently allows students in failing schools the option of transferring to another public school within the District, but many students have been denied this opportunity because of insufficient capacity within the public school system. Funding for a public school choice program, charter schools, and magnet schools is also included in the FY 2004 budget.

The budget also provides billions of dollars in new funding for other education programs, bringing the total to the largest amount ever spent at the federal level for education. Although only a very small percentage of these funds is designated to help families find better schools for their children, such programs are an important step in the right direction. They rest squarely on the foundation of previous legislative activity, current law, legal opinion, and research.

REMAINING CHALLENGES

Despite the growth of choice programs over the past few years, the vast majority of poor children remain trapped in poorly performing schools. The nation spends more than $422 billion each year on elementary and secondary education,[96] yet the results of the most recent NAEP tests in math, science, reading, history, and geography are deeply disappointing. Nearly six in 10 high school seniors lack even a basic knowledge of American history, and more than half of the nation's low-income 4th graders cannot read at a basic level.[97]

Moreover, America's children have fallen behind many of their international peers on tests of core academic knowledge, particularly in math and science. Despite higher-than-average per-pupil expenditures, American 8th graders ranked 19th among counterparts in 38 countries in math and 18th in science in the most recent international comparison of proficiency, the Third International Mathematics and Science Study–Repeat (TIMSS–R) of 1999.[98]

While parental choice has made significant headway in the past few years, opponents have done their best to limit its success. As the eminent scholars of the Koret Task Force on K–12 Education recently stated,

> *Choice-based reforms have not had a fair test.* Most evidence to date suggests that they can boost student learning and parental satisfaction, but constraints have kept them from being tried in full. Opponents have hamstrung school-choice programs at every turn: fighting voucher programs in legislative chambers and courtrooms; limiting per-pupil funding so tightly that it's impractical for new schools to come into being; capping the number of charter schools; and regulating and harassing them into near conformity with conventional schools.
>
> These barriers have kept choice-based reforms from receiving the proper trials they deserve, which is significant on two counts: first, by ensuring that only half-baked versions have been adopted, opponents have made it easier to claim that the reforms were tried but they failed; second, profound changes in a system—

95. Press release, "President Bush's 2004 Budget Will Include an Estimated $756 Million to Expand Options for Parents, Paige Says," U.S. Department of Education, January 31, 2003.

96. This is the latest figure available from the U.S. Department of Education for 2000 and includes private, local, state, and federal spending. See U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 2001*, at *http://nces.ed.gov/pubs2002/digest2001/ch1.asp*.

97. NAEP assessment results provide information about what students know and can do, as well as what they should know and be able to do, on a variety of subjects. The three achievement levels for each grade (4, 8, and 12) are Basic, Proficient, and Advanced. See National Center for Education Statistics, *The Nation's Report Card* results, at *http://nces.ed.gov/nationsreportcard*.

98. TIMSS–R 1999 "Benchmarking Highlights," Boston College, Lynch School of Education, International Study Center, April 2001, p. 3, at *www.timss.org/timss1999b/pdf/t99b_highlights.pdf*.

the kind of changes that choice would bring to bear—cannot arise overnight.[99]

RECOMMENDATIONS

In 2003, Congress will consider new choice legislation as well as the reauthorization of several key federal education programs, including the Individuals with Disabilities Education Act. This presents Congress with an excellent opportunity to expand school choice, especially for the children who need it most.

Specifically, Congress should:

- **Provide vouchers to students in Washington, D.C.** Congress should give children in the District of Columbia access to schools of excellence. Despite high per-pupil expenditures, children in D.C. schools continue to suffer from high dropout rates and low academic achievement. The demand for choice is evident in the city's higher-than-average charter school attendance and participation in private scholarship programs. There are hundreds of private schools in the D.C. metro area, most with tuitions that are less than the per-pupil expenditure in public schools.
- **Expand choice for students with special needs.** The Administration should insist that Congress follow the recommendations of the bipartisan Commission on Excellence in Special Education and provide the parents of special-needs children with a variety of educational options. Though many parents are satisfied with the services their children currently receive, those who are frustrated with the quality of service in their schools or dissatisfied with their children's academic progress should be able to access alternative services, including private schools. All parents—not just those who have been able to procure a private placement through the Individualized Education Plan (IEP) process—should have access to private providers. Florida's McKay Scholarship program, which provides vouchers to special education students to attend a private or public school of choice, provides a model of such a program.
- **Hold oversight hearings on choice.** Congress should hold hearings on how well the states and districts are implementing the choice and supplemental services provisions of the No Child Left Behind Act. If it becomes clear that there is insufficient will or capacity to give students meaningful public school choice, the Administration should insist that Congress enable students to receive Title I vouchers under the Elementary and Secondary Education Act to use for tuition at a private school of choice.

CONCLUSION

2002 was a momentous year for the school choice movement. The Supreme Court of the United States upheld the Cleveland Scholarship and Tutoring Program, opening the door for new voucher programs. Progress was made in the state courts against Blaine amendments—state constitutional provisions from an era tainted by discrimination against non-Protestant institutions.

New studies have added to the growing body of evidence that when parents are empowered to choose their children's schools—whether they choose public, public charter, private, or home schools—all students can benefit. This research has added to the growing recognition that competition produced by school choice improves the public system.

Ten states currently have publicly funded voucher or tax-credit programs, and 39 states and the District of Columbia have charter school laws. While 2002 legislative sessions saw the introduction of over 40 school choice bills, 2003 holds the prospect of even greater progress. Congress and the states have an historic opportunity to give parents new and meaningful options for the education of their children.

Authentic education reform empowers parents to provide their children with the best education that is available. The principles of parental empowerment and educational opportunity are shifting the

99. Paul E. Peterson, ed., *Our Schools and Our Future... Are We Still at Risk? Findings and Recommendations of the Koret Task Force on K–12 Education* (Stanford, Cal.: Hoover Institution Press, 2003), p. 14 (emphasis in original). For the full text of the book, see *www-hoover.stanford.edu/publications/books/osof.html*.

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education policy debate as more policymakers realize the benefits that choice holds for the nation's children.

—Krista Kafer is Senior Policy Analyst for Education at The Heritage Foundation.

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